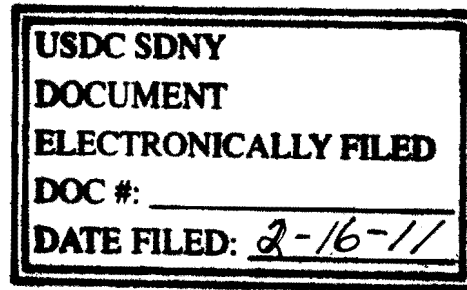


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



GO SMiLE, INC., a Delaware corporation,

Plaintiff,

-against-

DR. JONATHAN B. LEVINE, D.M.D. P.C., a  
New York Corporation; and DR. JONATHAN B.  
LEVINE, an individual,

Defendants.

No. 10 CIV 8663 (PKC) (ECF)

**AGREED STIPULATIONS**

Plaintiff GO SMiLE, Inc. ("GO SMiLE") and Defendants Dr. Jonathan B. Levine, D.M.D. P.C. (the "Dental Practice") and Dr. Jonathan B. Levine (Dr. Levine") hereby agree to the following stipulations in this matter:

**I. General Stipulations.**

1. For purposes of this hearing, no party will object on grounds of authenticity or foundation to any of the documents listed in each party's exhibit lists.

2. GO SMiLE was founded by Dr. Levine and his wife Stacey Levine.

3. Dr. Levine was an officer, compensated employee and director of GO SMiLE. Dr. Levine's employment was terminated on or about July 10, 2007 and he tendered his final resignation from the board on or about April 23, 2008.


4. Dr. Levine was a member of the Board of Directors of GO SMiLE from the formation of the company until about August 14, 2007 and then resumed his position as a member of the Board of Directors on February 19, 2008, which he held until his resignation from the board on April 23, 2008.

5. Dr. Levine controlled two Board of Director seats until April 23, 2008.

6. On April 21, 2008, Dr. Levine and his wife sold his stock in GO SMiLE to GoSMILE pursuant to a Settlement Agreement dated as of that date, and ended their affiliation with GO SMiLE except as set forth in the Settlement Agreement.

## II. Stipulations Concerning Federal Trademark Registrations and Applications.

7. According to the database uspto.gov records, GO SMiLE appears as the owner of the following federal trademark registrations and pending applications:

Trademark	Reg. No. Reg. Date Filing Date	Goods/Class	Registration Status
GO SMILE	2,566,285 30-Apr-2002 15-Mar-2001	Tooth whitening system comprised of peroxide gels (International Class 3)	Incontestable
GO SMILE	3,850,454 21-Sep-2010 08-Nov-2007	Dental floss (International Class 21)	Registered
GO SMILE (Stylized)	3,612,420 28-Apr-2009 16-Dec-2008	Breath freshener, lip balm, mouthwash, tooth whitening preparations, toothpaste (International Class 3), toothbrushes (International Class 21)	Registered
GO (& Design- Full Smiley Face Logo) 	3,612,218 28-Apr-2009 22-Sep-2008	Breath freshener; lip balm; mouthwash; tooth whitening preparations, toothpaste (International Class 3)	Registered
GO WHITEN	3,597,149 31-Mar-2009 31-Jul-2007	Tooth whiteners, namely, tooth whitening gels and liquids (International Class 3)	Registered


<b>Trademark</b>	<b>Reg. No. Reg. Date Filing Date</b>	<b>Goods/Class</b>	<b>Registration Status</b>
GO TRAVEL	3,673,598 25-Aug-2009 31-Jul-2007	Tooth whitening preparations, namely, tooth whitening gels, liquids and creams, tooth whitening preparations for maintenance of tooth whitening, namely, tooth whitening gels, liquids and creams, toothpaste, non-medicated breath freshening sprays, lip balm, non-medicated mouthwashes (International Class 3)	Registered
GOHEALTHY	3,342,219 20-Nov-2007 22-Aug-2006	Oral care products, namely, tooth whitening gels, liquids and creams; tooth whitening maintenance products, namely, tooth whitening gels, liquids and creams, lip-gloss, lipstick, lip balm, toothpastes, breath fresheners, namely, non-medicated diluted breath sprays used as mouthwash, and non-medicated concentrated breath sprays, non-medicated mouthwashes, non-medicated oral breath freshening sprays and breath freshening confectionery, namely, dissolvable breath mints and chewing gum (International Class 3)	Registered
GOSMILE	3,389,326 26-Feb-2008 29-May-2003	Products for care and treatment of the teeth, lips and breath, namely, breath spray, mouthwash, toothpaste, lip balm, and tooth whiteners comprised of peroxide gels (International Class 3); toothbrushes and dental floss (International Class 21)	Registered
GOSMILE	3,461,582 08-Jul-2008 08-Nov-2007	Online retail store services featuring oral care products (International Class 35)	Registered
GOSMILE AM	3,218,390 13-Mar-2007 29-May-2003	Toothpaste marketed and sold in high end retail department stores, spas, salons, resorts, doctors' and dentists' offices, and high end hotels (International Class 3)	Registered

<b>Trademark</b>	<b>Reg. No. Reg. Date Filing Date</b>	<b>Goods/Class</b>	<b>Registration Status</b>
GOSMILE AM/PM	3,230,142 17-Apr-2007 29-May-2003	Toothpaste marketed and sold in high end retail department stores as well as in spas, salons, resorts, doctors' offices, dentists' offices, and high end hotels (International Class 3)	Registered
GOSMILE PM	3,414,828 22-Apr-2008 29-May-2003	Toothpaste marketed and sold in high end retail department stores as well as in spas, salons, resorts, doctors' offices, dentists' offices, and high end hotels (International Class 3)	Registered
TOOTH WHITENING ON THE GO	3,016,610 22-Nov-2005 18-Mar-2002	Tooth whitening system comprised of peroxide gels (International Class 3)	Registered
ON THE GO	3,325,107 30-Oct-2007 30-Apr-2003	Tooth whitening system comprised of peroxide gels (International Class 3)	Registered
GOMAINTEIN	3,405,093 01-Apr-2008 31-Jul-2007	Tooth whiteners for tooth maintenance, namely, tooth whitening gels, liquids and creams (International Class 3)	Registered
GOPROTECT	3,405,092 01-Apr-2008 31-Jul-2007	Toothpastes (International Class 3)	Registered
GO DISCOVER	3,796,713 01-Jun-2010 23-Oct-2008	Teeth whitening kit; tooth whitening preparations; toothpaste (International Class 3)	Registered

<b>Trademark</b>	<b>Reg. No. Reg. Date Filing Date</b>	<b>Goods/Class</b>	<b>Registration Status</b>
GO ALL OUT	3,566,089 20-Jan-2009 11-Aug-2006	Tooth whiteners for tooth whitening, namely, tooth whitening liquids, creams, and gels, and tooth whitening maintenance products, namely, tooth whitening liquids, creams and gels, toothpaste, non-medicated breath freshening sprays and mouthwash, lip care products, namely, lip gloss, lip balm, and lipstick; breath freshening confectionery, namely breath mints and chewing gum (International Class 3)	Registered
GO ON... SMILE!	3,483,030 12-Aug-2008 09-Feb-2007	Oral and maxillofacial consulting and surgery services (International Class 44)	Registered
GO DAILY	Appln. No. 77/736,055 Filing Date 13-May-2009	Tooth whitening preparations; toothpaste (International Class 3); personal compact mirrors (International Class 20); toothbrushes (International Class 21)	Published
ON THE GO	Appln. No. 85/212216 Filing Date 06-Jan-2011	Toothpastes (International Class 3); toothbrushes (International Class 21)	Pending
WHITENING ON THE GO	Appln. No. 77/875,872 Filing Date 18-Nov-2009	Tooth whitening preparations (International Class 3)	Published
GO WHITER	Appln. No. 77/815,626 Filing Date 28-Aug-2009	Tooth whitening preparations, toothpaste (International Class 3), dental apparatus, namely, intra-oral light systems (International Class 10)	Published
GO VENEER	Appln. No. 77/660,203 Filing Date 30-Jan-2009	Paint-on tooth varnish for cosmetic purposes; tooth whitening preparations, namely, paint-on tooth varnish (International Class 3)	Published

Plaintiff's Exhibit ("PX") 1 contains true and correct copies of the registrations or applications for the marks listed above.

8. GO SMiLE filed the following federal trademark applications during the time that Dr. Jonathan B. Levine was an officer and/or director of GO SMiLE, the status of which is shown below:

<b>Trademark</b>	<b>Application No. Application Date</b>	<b>Registration Status</b>
FOR WHITENING ON THE GO	76/349,357 17-Dec-2001	Abandoned 22-Apr-2009
GO (Stylized) 	78/564,424 10-Feb-2005	Abandoned 07-Aug-2008
GO (Stylized) 	78/979,718 10-Feb-2005	Abandoned 18-Feb-2008
GO ALL OUT	78/950,424 11-Aug-2006	Abandoned 13-Jul-2009
GO ALL OUT	78/980,795 11-Aug-2006	Registered 20-Jan-2009
GO BRUSH	76/474,537 29-Nov-2002	Abandoned 21-Feb-2008
GO SMILE	78/053,342 15-Mar-2001	Registered 30-Apr-2002
GO TOUCH UP	78/886,551 18-May-2006	Abandoned 11-Jun-2007
GO TRAVEL	77/242,735 31-Jul-2007	Registered 25-Aug-2009
GO WHITE	77/109,522 16-Feb-2007	Abandoned 28-Dec-2009
GO WHITEN	77/242,766 31-Jul-2007	Registered 31-Mar-2009

<b>Trademark</b>	<b>Application No. Application Date</b>	<b>Registration Status</b>
GOBRIGHTER	78/563,761 09-Feb-2005	Abandoned 20-Dec-2007
GODIVINE	78/960,441 25-Aug-2006	Abandoned 05-Mar-2008
GOFLOSS	78/752,89014-Nov- 2005	Abandoned 04-Jun-2008
GOHEALTHY	78/957,19422-Aug- 2006	Abandoned 18-Mar-2008
GOHEALTHY	78/979,177 22-Aug-2006	Registered 20-Nov-2007
GOKISS	76/618,951 02-Nov-2004	Abandoned 07-Dec-2007
GOMAINTEIN	77/242,800 31-Jul-2007	Registered 01-Apr-2008
GOPROTECT	77/242,779 31-Jul-2007	Registered 01-Apr-2008
GOSMILE	76/518,246 29-May-2003	Registered 26-Feb-2008
GOSMILE AM	76/518,247 29-May-2003	Registered 13-Mar-2007
GOSMILE AM/PM	76/518,245 29-May-2003	Registered 17-Apr-2007
GOSMILE PM	76/518,244 29-May-2003	Registered 22-Apr-2008
GOSMILE R/X	78/747,156 04-Nov-2005	Abandoned 29-Dec-2008
GOSMILE WHITE	77/182,699 16-May-2007	Abandoned 02-Mar-2009
GOWHITE	77/109,535 16-Feb-2007	Abandoned 28-Dec-2009



<b>Trademark</b>	<b>Application No. Application Date</b>	<b>Registration Status</b>
ON THE GO	76/517,723 30-Apr-2003	Registered 30-Oct-2007
ON THE GO	78/822,399 24-Feb-2006	Abandoned 10-Jan-2011
SMILE ON THE GO	76/382,721 18-Mar-2002	Abandoned 28-Dec-2010
TOOTH WHITENING ON THE GO	76/382,722 18-Mar-2002	Registered 22-Nov-2005

9. According to the database uspto.gov records, The Dental Practice appears as the owner of the following federal trademark applications, which are now abandoned:

<b>Trademark</b>	<b>Appln. No. Filing Date</b>	<b>Goods</b>	<b>Status</b>
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Trademark	Appln. No. Filing Date	Goods	Status
SHINE ON!!	77/261,226 21-Aug-2007	Toothpaste, mouth washes, non-medicated dental mouth rinses and sprays; tooth whitening preparations, gels, creams and pastes (International Class 3); vitamin and mineral supplements; nutritional supplements, namely, anti-oxidants for mouth health; nutritional supplements, namely, anti-oxidants and vitamin supplements for overall health; medicated dental rinses and sprays (International Class 5); dental implants; orthodontic appliances; surgical apparatus and instruments for dental purposes; orthodontic machines and instruments; medical instruments for use in dental surgery and treatment of dental patients (International Class 10); dentistry and dental services, namely, delivery of dental care in the dental office; treating dental patients in all the specialties of dentistry including restorative dentistry, cosmetic dentistry, aesthetic dentistry, periodontics, orthodontic services, oral surgery, implantology, teeth whitening services, dental hygienic care (International Class 44)	Abandoned 20-Apr-2009
LEVINE AESTHETICS	77/260,135 21-Aug-2007	Toothpaste, mouth washes, non-medicated mouth rinses and sprays; tooth whitening preparations, gels, creams and pastes; non-medicated dental rinse (International Class 3)	Abandoned 11-Jan-2010
JBL RADICAL INNOVATIONS	77/556,631 27-Aug-2008	Teeth whitening kit; tooth whitening creams; tooth whitening gels; tooth whitening pastes; tooth whitening preparations (International Class 3); dentist services; teeth whitening services (International Class 44)	Abandoned 31-Jan-2011

A copy of the Patent and Trademark file wrapper for the Dental Practice's SHINE ON application is DX 52;

10. According to the database uspto.gov records, The Dental Practice appears as the owner of the following the federal trademark registrations and pending applications:

<b>Trademark</b>	<b>Appln. No. Filing Date</b>	<b>Goods</b>	<b>Status</b>
GLO (word)	77/474,026 14-May-2008	Mouth guards for use in protecting teeth during medical or dental procedures (International Class 10); teeth whitening services (International Class 44)	Registered 09-Nov-2010 Reg. No. 3,873,849
G.L.O. (word)	77/474,046 14-May-2008	Mouth guards for use in protecting teeth during medical or dental procedures (International Class 10); Teeth whitening services (International Class 44)	A third request for extension of time to file a Statement of Use has been granted 25-Aug-2010.
GUIDED LIGHT OPTICS	77/474,069 14-May-2008	Mouth guards for use in protecting teeth during medical or dental procedures (International Class 10); teeth whitening services (International Class 44)	A request for the third extension of time to file a statement of use has been granted 27-Aug-2010.
G-VIAL	77/556,610 27-Aug-2008	Teeth whitening kit; tooth whitening creams; tooth whitening gels; tooth whitening pastes; tooth whitening preparations (International Class 3); dentist services; teeth whitening services (International Class 44)	A third request for extension of time to file a Statement of Use has been granted 16-Oct-2010.
GLO SCIENCE (trademark)	77/795,234 03-Aug-2009	Teeth whitening kit; teeth whitening preparations (International Class 3)	A first request for extension of time to file a Statement of Use has been granted 12-Oct-2010.
GLO SCIENCE (service mark)	77/795,242 03-Aug-2009	Teeth whitening services (International Class 44)	A first request for extension of time to file a Statement of Use has been granted 12-Oct-2010.

<b>Trademark</b>	<b>Appln. No. Filing Date</b>	<b>Goods</b>	<b>Status</b>
KARMA	77/255,348 14-Aug-2007	Toothpaste, mouth washes, non-medicated dental mouth rinses and sprays; tooth whitening preparations, gels, creams and pastes (International Class 3); dentistry and dental services, namely, delivery of dental care in the dental office; treating dental patients in all the specialties of dentistry including restorative dentistry, cosmetic dentistry, aesthetic dentistry, periodontics, orthodontic services, oral surgery, implantology, teeth whitening services, dental hygienic care (International Class 44)	On suspension 04-Jan-2011
SMILE REVOLUTION (trademark)	77/838,148 30-Sep-2009	Teeth whitening kit; teeth whitening strips impregnated with teeth whitening preparations; tooth bleaching preparations; tooth cleaning preparations; tooth whitening gels; tooth whitening preparations (International Class 3)	A first request for extension of time to file a Statement of Use has been granted 23-Sep-2010.
SMILE REVOLUTION (service mark)	77/838,160 30-Sep-2009	Teeth whitening services (International Class 44)	A first request for extension of time to file a Statement of Use has been granted 23-Sep-2010.

A copy of the GLO registration is DX 42. A copy of the file wrapper for the G.L.O. application is DX 46. A copy of the file wrapper for the GUIDED LIGHT OPTICS application is DX 47. A copy of the file wrapper for the G-VIAL application is DX 55. A copy of the file wrappers for the GLO SCIENCE applications are DX 45. A copy of the file wrapper for the KARMA application is DX 53. A copy of the file wrapper for the SMILE REVOLUTION application is DX 56.

11. GloScience LLC filed the following federal trademark applications, which are now pending:

<b>Trademark</b>	<b>Appln. No. Filing Date 1st Use Date</b>	<b>Goods</b>	<b>Status</b>
GLO (logo)	85/211,039 05-Jan-2011 25-May-2010	Intra-oral light systems; intra-oral light and heat (International Class 10)	Awaiting office action.
GLO (logo)	85/210,999 05-Jan-2011 25-May-2010	Dental bleaching gels; teeth whitening kits; teeth whitening devices; teeth bleaching preparations; teeth cleaning preparations; teeth whitening gels (International Class 3)	Awaiting office action.
GLO BRILLIANT (words)	85/211,725 06-Jan-2011 25-May-2010	Intra-oral light systems; intra-oral light and heat systems (International Class 10)	Awaiting office action.
GLO BRILLIANT (words)	85/211,707 06-Jan-2011 25-May-2010	Dental bleaching gels; teeth whitening kits; teeth whitening devices; teeth bleaching preparations; teeth cleaning preparations; teeth whitening gels; teeth whitening preparations; vials for oral care; vials for teeth whitening preparations; vials for dental bleaching gel (International Class 3)	Awaiting office action.

12. On June 26, 2008, counsel for Defendants ordered a US Cosmetics Availability search for the trademark CRESCENDO, for oral care services and toothpaste, a copy of which is DX 51. That search did not disclose any federal trademark registrations or applications to register CRESCENDO for oral care products or services.

13. On October 8, 2008, counsel for Defendants ordered a full trademark search for the trademark SMILE SPA for dental and medical services and products, a copy of which is DX 48.

### **III. Stipulations Regarding GO SMiLE's Policing of its Trademarks.**

14. On June 14, 2007, GO SMiLE authorized its counsel, Jay Spiegel, to send a cease and desist letter to DenTek Oral Care Company demanding that DenTek abandon its application to register GO WHITE, a copy of which is PX 187.

15. On June 29, 2007, GO SMiLE opposed Dentek's application to register GO WHITE.

16. Go SMiLE and DenTek entered into a settlement agreement dated as of October 31, 2008, under which GO SMiLE acquired the rights to GO WHITE. A copy of this settlement agreement is PX 187A.

17. On July 3, 2007, GO SMiLE authorized its counsel, Jay Spiegel, to send a cease and desist letter to Johnson & Johnson requesting that Johnson & Johnson cease all use of the ON THE GO ESSENTIALS word mark and design mark. A copy of GO SMiLE's cease and desist letter is PX 184.

18. GO SMiLE and Johnson & Johnson entered into a settlement and co-existence agreement dated as of April 13, 2009, that provides that both GO SMiLE and Johnson & Johnson will use their respective house marks or (in the case of Johnson & Johnson, a trademarked brand name) and not adopt trade dress or packaging that is confusingly similar to each other. A copy of the co-existence agreement is included in PX 184A.

19. On July 17, 2007, Mr. Spiegel sent a cease and desist letter on behalf of GO SMiLE to GLOSMILES and Dr. Lina Frost, the dentist using the GLOSMILES mark, a copy of which is PX 186.

20. GO SMiLE and Dr. Frost entered into a settlement agreement dated as of December 14, 2007 under which Dr. Frost agreed to permanently cease and desist all use of the GLOSMILES trademark, a copy of which is PX 186A.

21. On December 19, 2008, GO SMiLE sent a cease and desist letter to Bound Media & Management, Inc. regarding its application to register “GloWhiteSmiles” for teeth whitening services, a copy of which is PX 203.

22. Bound Media expressly abandoned its application on November 11, 2008, a copy of which is PX 203A.

23. On February 6, 2009, GO SMiLE sent a cease and desist letter to counsel for Marquis Nolan regarding his application to register BRUSH-N-GO for toothbrushes, a copy of which is PX 201.

24. Marques Nolan abandoned that application on May 17, 2010, a copy of which is PX 201A.

25. On March 16, 2009, GO SMiLE sent a cease and desist letter to Michael Dawson regarding his use of the trade name SMILES-2-GO and his ownership and use of the domain name www.smiles-2-go.com and putting him on notice of GO SMiLE’s rights, a copy of which is PX 200.

26. As of February 14, 2011 SMILES-2-GO domain is no longer registered, a copy of which is PX 200A.

27. On July 27, 2009, GO SMiLE sent a cease and desist letter to Landaal Farman regarding his application to register the mark TOGOSMILE for a teeth whitening kit, a copy of which is PX 193.

28. As of November 15, 2009, GO SMiLE and Mr. Farman entered into a settlement agreement under which Mr. Farman agreed to GO SMiLE’s demands, a copy of which is PX 193A.

29. On September 16, 2009, GO SMiLE sent a cease and desist letter to counsel for Dr. Levine regarding his registration and use of the domain name [www.gosmileaesthetic.com](http://www.gosmileaesthetic.com), a copy of which is PX 195.

30. On June 24, 2010, GO SMILE sent a cease and desist letter to Taizhou Hongmeng Industrial Co., Ltd. regarding its application to register GO TOUCH for dentifrices and toothbrushes, a copy of which is PX 194.

31. On September 1, 2010, GO SMiLE filed Opposition No. 91/196,365, opposing the registration of GO TOUCH, a copy of which is PX 194A.

32. On December 13, 2010, the Trademark Trial and Appeal Board (“TTAB”) sustained GO SMiLE’s opposition to the registration of GO TOUCH, and registration of that application has been refused. A copy of the decision of the TTAB is PX 194B.

33. On June 17, 2010, GO SMiLE sent a letter to Beba Product Concepts demanding written assurance that it would not expand its use of the TOUCH UP & GO mark to oral care products, a copy of which is PX 191.

34. On July 18, 2010, Beba Products responded by agreeing to the demands in PX 191, a copy of which is PX 191A.

35. On September 20, 2010, GO SMiLE sent a cease and desist letter to TaMas LLC regarding its registration of and operation under the domain name [www.gosmiles.shop](http://www.gosmiles.shop). A copy of this cease and desist letter is PX 190.

36. On October 18, 2010, GO SMiLE sent a cease and desist letter to Kenneth Gauci regarding his ownership and use of the domain name [www.glowhitening.com](http://www.glowhitening.com) and [www.theglospa.com](http://www.theglospa.com) for teeth whitening products, a copy of which is PX 192.



37. Mr. Gauci agreed to the demands in PX 192 to this request. A copy of Mr. Gauci's response is PX 192B. On February 10, 2010, GO SMiLE sent a follow-up letter to Mr. Gauci regarding the continuing use of GLO WHITENING, a copy of which is PX 192A.

38. On January 14, 2011, GO SMiLE sent a cease and desist letter to Jeppesen AG demanding that Jeppesen delete dentifrices in International Class 3 and materials for stopping teeth and dental wax in International Class 5 from its registration for GO RELAXED, a copy of which is DX 223.

39. On January 14, 2011, GO SMiLE sent a cease and desist letter to Herwig Preis demanding that he delete dentifrices in International Class 3 from his federal trademark applications to register GO FOR GLOW and GO4GLOW and not use the marks in connection with such products, a copy of which is PX DX 224.

40. On February 4, 2011, Mr. Preis agreed to the demands in PX 163. A copy of the response to PX 163 is PX 163A.

#### **IV. Stipulations Concerning the Polaroid Factors.**

41. For purposes of the *Polaroid* test, GO SMiLE's GO WHITER light device and defendants' "GLO"-branded light device are directly competitive products, may be marketed and sold to the same consumers and will be sold through the same or similar marketing channels, including Sephora and television home shopping networks.

42. There may be instances where GO SMiLE's GO WHITER light device and defendants' "GLO"-branded light device will be displayed side-by-side.

43. The "bridging the gap" element of the Polaroid test is not relevant in this matter.

**V. Stipulations Concerning Defendants' Websites**

44. On November 16, 2010, the following statement appeared on the web page [www.gloscience.com](http://www.gloscience.com): “glo™ GLO Brilliant Smile Whitening System coming soon.” PX 211A is a true and correct copy of [www.gloscience.com](http://www.gloscience.com) on November 16, 2010.

45. Defendants were served with the Complaint on November 17, 2010.

46. As of November 23, 2010, the phrase “GLO Brilliant Smile Whitening System” had been removed from [www.gloscience.com](http://www.gloscience.com), and was replaced with the phrase “Glo Brilliant personal teeth whitening device.” PX 211C is a true and correct copy of [www.gloscience.com](http://www.gloscience.com) on November 23, 2010.

47. As of December 20, 2010, the statement ““glo™ GLO Brilliant Smile Whitening System coming soon” had been removed from [www.gloscience.com](http://www.gloscience.com). As of December 20, 2010, the [www.gloscience.com](http://www.gloscience.com) website contained the following statement: “GLO Brilliant Personal Teeth Whitening Device” and “Just put it on, press power—and GLO™.” PX 211B is a true and correct copy of [www.gloscience.com](http://www.gloscience.com) on December 20, 2010.

48. Before and as of November 16, 2010, the website for the Dental Practice, [www.jonathanblevine.com](http://www.jonathanblevine.com), contained the statement, “In 2002, [Dr. Levine] and his wife Stacey co-founded the revolutionary smile beauty company GoSMILE.” The website had an “Innovation” tab, under which was information about the “GLO Smile Whitening System,” and which displayed the following phrases: “It’s time to get your GLOing smile;” and “Dr. Levine recommends you use The GLO Whitening System 2x a year.” PX 212 is a true and correct copy of [www.jonathanblevine.com](http://www.jonathanblevine.com) on November 16, 2010.

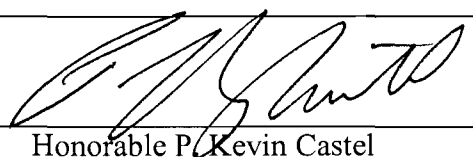
49. As of November 22, 2010, references to Dr. Levine’s association with GO SMiLE had been removed from [www.jonathanblevine.com](http://www.jonathanblevine.com). The “Innovations” tab displayed “Glo Whitening™.” Further, the website referred to the company as “Glo Science” and called the

product the “Glo Brilliant Smile Whitening System,” and had references to the “GLO Brilliant Whitening Mouthpiece,” “Glo Brilliant Whitening Gels,” and “Glo Control.” PX 212C is a true and correct copy of [www.jonathanblevine.com](http://www.jonathanblevine.com) on November 22, 2010.

50. As of December 10, 2010, the “Innovations” tab had been replaced with a “Science” tab, and the website referred to the light device as the “GLO Professional Smile Whitening System.” The following trademarks appeared on the website: “glo™ whitening;” and Glo™ Whitening™ Treatment.” PX 212D is a true and correct copy of [www.jonathanblevine.com](http://www.jonathanblevine.com) on December 9-10, 2010.

<p>GO SMILE, INC.</p> <p>By: </p> <p>Wendi E. Sloane Heather J. Macklin Annaliese F. Fleming BARACK FERRAZZANO KIRSCHBAUM &amp; NAGELBERG LLP 200 West Madison Street Suite 3900 Chicago, Illinois 60606 <a href="mailto:wendi.sloane@bfkn.com">wendi.sloane@bfkn.com</a> <a href="mailto:heather.macklin@bfkn.com">heather.macklin@bfkn.com</a> <a href="mailto:annaliese.fleming@bfkn.com">annaliese.fleming@bfkn.com</a></p> <p>Date: February 15, 2011</p>	<p>DR. JONATHAN B. LEVINE, D.M.D. P.C., a New York Corporation; and DR. JONATHAN B. LEVINE, an individual</p> <p>By: </p> <p>Kyle C. Bisceglie Howard J. Smith Joshua S. Androphy OLSHAN GRUNDMAN FROME (ROSENZWEIG &amp; WOLOSKY LLP Park Avenue Tower 65 East 55<sup>th</sup> St. New York, NY 10022 <a href="mailto:KBisceglie@olshanlaw.com">KBisceglie@olshanlaw.com</a> <a href="mailto:HSmith@olshanlaw.com">HSmith@olshanlaw.com</a> <a href="mailto:JAndrophy@olshanlaw.com">JAndrophy@olshanlaw.com</a></p> <p>Date: February 15, 2011</p>
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SO ORDERED.

  
Honorable P. Kevin Castel

2-16-11